IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 215 OF 2004

IN

SUMMARY SUIT NO.496 OF 2004

Shalini S. Marathe & Anr. .. Plaintiffs

versus

Vishwas G. Tendolkar, Prop. of

Navprakash Printing Press .. Defendants

...

Mr.Tejas Bhatt for the plaintiff.

Mr.A.S Malvankar for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 7th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The plaintiffs have filed the suit for recovery of the loan of Rs.50,000/- given by them to the defendant. The defendant executed two receipts

(Exhibit B and C) acknowledging the receipt of the loan. The defendant also sent a balance confirmation letter (Exhibit-D) in which also he has admitted the receipt of the loan. Despite notice of demand, the defendant failed and neglected to make the payment. No reply was sent to the notice of demand.

3. By filing an affidavit in reply, the defendant has contended that the son of the plaintiff no.1 has separately borrowed a loan of Rs.2,00,000/- lakhs and therefore, the defendant is not liable to repay the loan advanced by the plaintiffs. Firstly, no document has been produced to show that the son of plaintiff no.1 has borrowed any money from the defendant no.1. Secondly, assuming that any money has been borrowed by the son of plaintiff no.1 i.e. no ground for non payment of the money which the defendant has admittedly borrowed from the plaintiffs. The defendant is at liberty to file a suit against the son of plaintiff no.1 if he is a defaulter in repayment of the loan allegedly borrowed by him Thus, there is no defence of any substance available to the defendant in the suit. As such, the defendant can only be granted conditional leave subject to deposit of atleast the principal amount

due.

4. In the circumstances, the defendant is granted conditional leave to defend the suit, subject to depositing in the Court principal sum of Rs.50,000/- within a period of four weeks. On such deposit, the plaintiff shall be entitled to withdraw the said sum by furnishing security to the satisfaction of Prothonotary and Sr. Master. On failure to deposit, the plaintiff shall have liberty to apply.

5. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant shall file written statement within a period of one month.

D.G. KARNIK, J